

# MEMORANDUM

August 31, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: RICHARD K. MASON  
Assistant County Counsel  
Health Services Division

RE: County of Los Angeles v. Sandra Shewry and State Department of Health Services  
Los Angeles Superior Court Case No. BS 099497

DATE OF INCIDENT: March 2001 through July 2004

AUTHORITY REQUESTED: County would receive approximately \$31,954.

COUNTY DEPARTMENT: Department of Health Services

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## CLAIMS BOARD ACTION:



Approve



Disapprove



Recommend to Board of Supervisors for Approval




ROCKY ARMFIELD

, Chief Administrative Office



JOHN F. KRATTLI

, County Counsel



MARIA M. OMS

, Auditor-Controller

on October 2, 2006

## SUMMARY

This is a recommendation to settle a County lawsuit against the State Medi-Cal program which challenges the denial of Treatment Authorization Requests ("TARs"). The proposed settlement would resolve a lawsuit pending in the Superior Court.

This lawsuit concerns a total of 86 days of care provided to Medi-Cal patients between March 2001 and July 2004 at LAC+USC Medical Center ("LAC+USC") and Harbor/UCLA Medical Center ("Harbor/UCLA"). The maximum value to the County of this lawsuit is approximately \$96,022.

As to LAC+USC, the lawsuit involves 41 acute care days, with a total of approximately \$48,995 at issue. As to Harbor/UCLA, 38 acute care days and 7 acute administrative days, with a total of approximately \$47,027, are at issue.

Under the proposed settlement, the State will process the TARs for 25 acute days and 9 acute administrative days, thus, allowing the County to receive reimbursement in the amount of approximately \$31,954. Additionally, the County will be able to claim all 34 of the days processed as a result of the settlement for purposes of calculating its Disproportionate Share Hospital ("DSH") payments.

## LEGAL PRINCIPLES

The Medi-Cal program is obligated to pay for inpatient treatment only to the extent that the hospital has obtained an approved TAR from the Medi-Cal program for each day of the hospital stay. The Medi-Cal program has an obligation to grant a TAR if the patient is entitled to full scope Medi-Cal benefits and there is a showing of medical necessity based upon information in the patient's medical record. Many of the patients whose TARs were denied were undocumented aliens, also known as limited scope Medi-Cal patients, who are only entitled to Medi-Cal if the care provided constituted emergency services.

## SUMMARY OF FACTS

Each County hospital seeks a TAR for each day of inpatient care provided to a Medi-Cal beneficiary. When a TAR is denied and the hospital questions the denial, the matter is usually resolved through discussions between hospital personnel and Medi-Cal officials. If the dispute is not resolved through this informal process, the only effective method for further challenge is through litigation such as this case.

TAR denial litigation is usually not very cost effective to pursue, since each day of care is justified by its own particular set of facts and the cost to prove the claim can often exceed its value. Nevertheless, the Department of Health Services ("DHS") periodically identifies for pursuit through litigation denied TARs where services were provided and where there appears to be a basis for questioning the State's denial. The County has filed a number of these cases over the years.

The vast majority of TARs are approved either when initially presented to the State or as the result of informal discussions at the hospital after a denial. Some remaining TAR denials are reversed at the first or second level of appeal. Consequently, TAR denials which are taken to litigation are the ones most difficult to overturn, and their settlement value is relatively low.

This lawsuit challenges denied TARs for 86 days of care at two County hospitals during the period of March 2001 through July 2004. The maximum value to the County for these days of care is approximately \$96,022.

## STATUS OF CASE

This case is being settled at an early stage of litigation, as DHS, through counsel, has established a practice of entering into negotiations with the State shortly after filing this type of lawsuit. This allows us to resolve the issues without incurring the extensive costs associated with discovery and trial preparation. Unfortunately, the State attorneys have required that we file the litigation before they are willing to enter into settlement negotiations. Also, the State attorneys require that the settlement negotiations be conducted on a patient-day-by-patient-day basis, rather than on an overall settlement percentage.

## EVALUATION

The total settlement amount of approximately \$31,954 is equal to approximately 33.3% of the total amount at issue. Because the TAR denials under review in any litigation are denials which have been upheld through several reviews, they necessarily are denials which will be difficult to overturn.

Additionally, the federal court of appeals has established an extremely narrow definition of "emergency," in the context of determining the scope of services covered under Medicaid for undocumented aliens. If this definition were applied to the claims at issue involving services to undocumented aliens, the court would likely determine that a large percentage of the TARs at issue in the litigation that involve care to undocumented aliens are not covered by Medi-Cal, because the services do not meet the definition of "emergency" care. This case involves a significant number of TARs for services provided to undocumented aliens.

Additionally, the expense and County resources associated with litigation of these types of cases is significant given the number of TARs involved and the factually dependent nature of the litigation. Therefore, it is believed that the proposed settlement is comparable, if not better, than the County likely would recover if this case were litigated. The attorney's fees and costs incurred by the County in this case are about \$10,700.

We join our private counsel of Foley and Lardner LLP in recommending settlement of this lawsuit. DHS, which participated in the settlement discussions, is fully in support of this settlement.

APPROVED:

A handwritten signature in black ink, appearing to read "Rick K. Mason", written over a horizontal line.

RICHARD K. MASON  
Assistant County Counsel

RKM:bdv